

State of Wisconsin



2009 Senate Bill 504

Date of enactment: **March 15, 2010**

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2009 WISCONSIN ACT 174

AN ACT to *renumber* 461.02 (9) (a) to (d); to *renumber and amend* 461.02 (2) (f), 461.02 (9) (intro.) (except 461.02 (9) (title)) and 461.04 (4); to *amend* 440.08 (2) (a) (intro.), 461.01 (5), 461.02 (2) (intro.), 461.02 (4) (a), 461.02 (5) (title), 461.02 (5) (a) to (d), 461.02 (6), 461.03 (1), 461.03 (2) and 461.04 (4) (title); and to *create* 461.02 (2) (f) 2., 461.02 (4) (c), 461.04 (4) (a), 461.04 (4) (c) and 461.10 of the statutes; **relating to**: professional employer organizations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 440.08 (2) (a) (intro.) of the statutes is amended to read:

440.08 (2) (a) (intro.) Except as provided in par. (b) and in ss. 440.51, 442.04, 444.03, 444.11, 448.065, 447.04 (2) (c) 2., 449.17 (1m) (d), and 449.18 (2) (d), ~~and 461.02 (3) (a) and (b) and (4)~~, the renewal dates for credentials are as follows:

SECTION 2. 461.01 (5) of the statutes is amended to read:

461.01 (5) "Professional employer organization" means a person that is engaged in the business of entering into written contracts for the provision of the nontemporary, ongoing employee workforce of a client and providing services under those contracts and that under those contracts has the obligation to pay the employees providing services for those clients from its own accounts, regardless of whether the person uses the term "professional employer organization," "PEO," "staff leasing company," "registered staff leasing company," "employee leasing company," or "administrative employer," or uses any other name, as part of the person's business name or to describe the person's business. "Pro-

fessional employer organization" does not mean a temporary help agency, as defined in s. 102.01 (2) (f), or a temporary help company, as defined in s. 108.02 (24m).

SECTION 3. 461.02 (2) (intro.) of the statutes, as affected by 2009 Wisconsin Act 29, is amended to read:

461.02 (2) (intro.) Except as provided in sub. (7) (b), an applicant for registration under this section shall submit to the department an application for registration on a form prescribed by the department, together with the registration fee determined by the department under s. 440.03 (9) (a), ~~that contains~~ and all of the following information:

SECTION 4. 461.02 (2) (f) of the statutes is renumbered 461.02 (2) (f) 1. and amended to read:

461.02 (2) (f) 1. ~~A~~ Except as provided under subd. 2., a financial statement that sets forth the financial condition of the applicant as of a date that is not more than 13 months preceding the date of the application, that is prepared in accordance with generally accepted accounting principles, and that has been audited by an independent certified public accountant. The financial statement shall be without qualification as to the going concern status of the applicant. A professional employer group may meet the requirements of this paragraph subdivision by submitting a combined or consolidated audited financial

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

statement. An applicant that does not have sufficient operating history to have an audited financial statement that is based on at least 12 months of operating history may meet the requirements of this ~~paragraph~~ subdivision by submitting financial statements that have been reviewed by an independent certified public accountant.

SECTION 5. 461.02 (2) (f) 2. of the statutes is created to read:

461.02 (2) (f) 2. Subdivision 1. does not apply to a professional employer organization or professional employer group applying for registration under sub. (5).

SECTION 6. 461.02 (4) (a) of the statutes, as affected by [2009 Wisconsin Act 29](#), is amended to read:

461.02 (4) (a) ~~On Renewal applications shall be submitted, together with the applicable renewal fee determined by the department under s. 440.03 (9) (a), to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a), and except, Except as provided in par. (b) and (c) and sub. (7) (b), a registrant that wishes to renew its registration the renewal application shall submit to the department, on forms furnished by the department, a renewal application, together with an updated be accompanied by a financial statement described, as that term is used in sub. (2) (f) and the renewal fee determined by the department under s. 440.03 (9) (a). A renewal of registration is valid for one year after the date of renewal 1., updated to reflect the current financial condition of the registrant.~~

SECTION 7. 461.02 (4) (c) of the statutes is created to read:

461.02 (4) (c) A professional employer organization or professional employer group applying to renew a registration issued under sub. (5) is not required to submit a financial statement under this subsection.

SECTION 8. 461.02 (5) (title) of the statutes is amended to read:

461.02 (5) (title) ~~LIMITED SMALL OPERATIONS REGISTRATION.~~

SECTION 9. 461.02 (5) (a) to (d) of the statutes, as affected by [2009 Wisconsin Act 29](#), are amended to read:

461.02 (5) (a) Except as provided in sub. (7) (b), a professional employer organization or professional employer group that is domiciled outside this state, that is registered or licensed as a professional employer organization or professional employer group in another state, that does not maintain an office in this state or directly solicit clients that are located or domiciled in this state, and that has no more than 50 employees performing services for clients in this state on any given day may apply for limited small operations registration under this section by filing with the department a limited small operations registration form prescribed by the department and paying the initial credential fee determined by the department under s. 440.03 (9) (a). An applicant that is seeking limited small operations registration shall, in addition to

the information ~~provided~~ required under sub. (2) (a) to (e), provide the department with information and documentation showing that the applicant meets the qualifications specified in this paragraph for limited small operations registration.

(b) Except as provided in sub. (7) (b), a professional employer organization or professional employer group seeking limited small operations registration that has employees performing services for clients in this state on July 1, 2009, shall register with the department as provided in sub. (3) (a), ~~and the initial limited registration shall be valid as provided in sub. (3) (a).~~

(c) Except as provided in sub. (7) (b), a professional employer organization or professional employer group seeking limited small operations registration that does not have employees performing services for clients in this state on July 1, 2009, shall register with the department as provided in sub. (3) (b), before contracting with a client in this state, ~~and the initial limited registration shall be valid as provided in sub. (3) (b).~~

(d) Except as provided in sub. (7) (b), a professional employer organization or professional employer group registered under this subsection that wishes to renew its limited small operations registration shall, in addition to complying with sub. (4), provide the department with information and documentation showing that the professional employer organization or professional employer group continues to meet the qualifications specified in par. (a) for limited small operations registration, ~~and the limited registration shall be valid as provided in sub. (4).~~

SECTION 10. 461.02 (6) of the statutes, as affected by [2009 Wisconsin Act 29](#), is amended to read:

461.02 (6) PROFESSIONAL EMPLOYER GROUP REGISTRATION. Except as provided in sub. (7) (b), 2 or more professional employer organizations that are part of a professional employer group may register under this section or renew a registration by providing the information required under sub. (2), (4), or (5) on a combined or consolidated basis, paying the initial credential or renewal fee determined by the department under s. 440.03 (9) (a), and guaranteeing each other's obligations. If a professional employer group provides a combined or consolidated financial statement under sub. (2) (f) 1. that includes the financial condition of entities that are not part of the professional employer group, the person controlling the professional employer group shall guarantee the obligations of the professional employer organizations in the professional employer group.

SECTION 11. 461.02 (9) (intro.) (except 461.02 (9) (title)) of the statutes is renumbered 461.02 (9) (am) and amended to read:

461.02 (9) (am) The department shall maintain and periodically update a list of all professional employer organizations and professional employer groups registered under this section. ~~All, and shall make the list avail-~~

able on the department's Internet Web site. The list shall include the address of each registrant.

(bm) Except as provided in par. (am), all records maintained by the department that contain any information obtained from an applicant or registrant are confidential and not open to public inspection or copying under s. 19.35 (1) unless one of the following applies:

SECTION 12. 461.02 (9) (a) to (d) of the statutes are renumbered 461.02 (9) (bm) 1. to 4.

SECTION 13. 461.03 (1) of the statutes is amended to read:

461.03 (1) **WORKING CAPITAL REQUIREMENT.** Working capital, as defined by generally accepted accounting principals, of not less than \$100,000, as shown in the financial statement submitted to the department under s. 461.02 (2) (f) 1., (4), or (6). If a professional employer organization or professional employer group has less than \$100,000 in working capital, the department may issue a registration or renewal registration contingent on the registrant meeting the working capital requirement of this subsection no later than 180 days after the issuance of the registration or renewal registration. During the period of contingent registration, the registrant shall submit quarterly financial statements to the department accompanied by an attestation by the chief executive officer of the registrant that all wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, and other amounts that are payable to or with respect to an employee of the registrant performing services for a client were paid by the registrant when due.

SECTION 14. 461.03 (2) of the statutes is amended to read:

461.03 (2) **ALTERNATIVE COMMITMENT.** A bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than \$100,000 or, if the financial statement submitted to the department under s. 461.02 (2) (f) 1., (4), or (6) indicates a deficit in working capital, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than \$100,000 plus an amount that is sufficient to cover that deficit. The commitment described in this subsection shall be in a form approved by the department, shall be held in a depository designated by the department, and shall secure the payment by the professional employer organization or professional employer group of any wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable to or with respect to an employee performing services for a client if the professional employer organization or professional employer group does not make those payments when due. The commitment shall be established in favor of or be made payable to the department, for the benefit of the state and any employee to whom or with respect to whom the professional employer orga-

nization or professional employer group does not make a payment described in this subsection when due. The professional employer organization or professional employer group shall file with the department any agreement, instrument, or other document that is necessary to enforce the commitment against the professional employer organization or professional employer group, or against any relevant 3rd party, or both.

SECTION 15. 461.04 (4) (title) of the statutes is amended to read:

461.04 (4) (title) **TAX CREDITS AND OTHER ECONOMIC DEVELOPMENT INCENTIVES; TAXES, ASSESSMENTS, EXPENDITURES, AND BENEFITS.**

SECTION 16. 461.04 (4) of the statutes is renumbered 461.04 (4) (b) and amended to read:

461.04 (4) (b) For purposes of determining tax credits, other economic development incentives provided by the state or a local governmental unit that are based on providing employment, or any other benefits that arises arise out of the employment of an employee of a professional employer organization or professional employer group who is performing services for a client, such an employee is considered to be an employee solely of the client, and the client is entitled to the benefit of the tax credit, economic development incentive, or other benefit. If the amount of a tax credit, incentive, or benefit described in this subsection paragraph is based on the number of employees employed by a client, only those employees of a professional employer organization or professional employer group who are performing services for the client shall be treated as employees employed by the client, and employees of the professional employer organization or professional employer group who are performing services for the professional employer organization or professional employer group or for another client shall not be treated as employees employed by the client. On request of a client that is seeking a tax credit, incentive, or other benefit described in this subsection paragraph or on request of an agency of this state or local governmental unit that is responsible for administering such a tax credit, incentive, or benefit, a professional employer organization or professional employer group shall provide any employment information requested and reasonably required by the agency or local governmental unit that is necessary to support a claim, application, or other action by the client.

SECTION 17. 461.04 (4) (a) of the statutes is created to read:

461.04 (4) (a) In this subsection, "local governmental unit" has the meaning given in s. 19.42 (7u).

SECTION 18. 461.04 (4) (c) of the statutes is created to read:

461.04 (4) (c) Taxes, assessments, expenditures, or benefits required by the state or a local governmental unit to be paid by an employer on a per employee basis shall be paid by, assessed against, or charged to a client if the

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employee is providing services for that client or by a professional employer organization or professional employer group if the employee is providing services to the professional employer organization or professional employer group and not assigned to or providing services for a specific client. Benefits or monetary consideration provided or paid to an employee by a professional employer organization or professional employer group shall be credited against the obligations required to be

paid by, assessed against, or charged to the client if the benefits or monetary consideration provided or paid to the employee satisfy the requirements imposed by the state or local governmental unit.

SECTION 19. 461.10 of the statutes is created to read:

461.10 Short title. This chapter shall be known as the “Wisconsin Professional Employer Organizations Act.”
